

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Koningstein	Art Unit :	3622
Patent No. :	7,930,206	Examiner :	William A. Brandenburg
Issue Date :	April 19, 2011	Conf. No. :	1968
Serial No. :	10/748,681		
Filed :	December 31, 2003		
Title :	SYSTEM AND METHOD FOR ENABLING AN ADVERTISEMENT TO FOLLOW THE USER TO ADDITIONAL WEB PAGES		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)

Patentee hereby requests reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent. Reconsideration of the final PTA calculation to increase total PTA from 1,355 days to 1,468 days is respectfully requested.

“A Delays” are defined as delays by the U.S. Patent and Trademark Office (PTO) under 35 U.S.C. § 154(b)(1)(A), which guarantees prompt PTO response. “B Delays” are defined as delays by the PTO under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than three year application pendency. Patentee respectfully submits that the Office did not apply the proper standard for determining the period of “B Delay” under 35 U.S.C. § 154(b)(1)(B).

REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

Applicant Delay

A reply to an Office Action was due on or before July 16, 2008 (the date that is three months after April 16, 2008, the date on which the Office Action was mailed). Patentee filed a response to the Office Action on August 18, 2008, thereby according an Applicant Delay of 33 days. Patentee does not dispute the PTO’s calculation for this Applicant Delay from July 17, 2008 (the day after the date that is three months after the date on which the Office Action was mailed), to August 18, 2008. See 37 C.F.R. § 1.704(b).

A reply to an Office Action was due on or before January 16, 2009 (the date that is three months after October 16, 2008, the date on which the Office Action was mailed). Patentee filed

CERTIFICATE OF MAILING BY EFS-WEB FILING

I hereby certify that this paper was filed with the Patent and Trademark Office using the EFS-WEB system on this date: June 17, 2011.

a response to the Office Action on January 26, 2009, thereby according an Applicant Delay of 10 days. Patentee does not dispute the PTO's calculation for this Applicant Delay from January 17, 2009 (the day after the date that is three months after the date on which the Office Action was mailed), to January 26, 2009. See 37 C.F.R. § 1.704(b).

Patentee filed an Information Disclosure Statement on June 10, 2009, subsequent to a reply filed on May 12, 2009. Patentee was accorded a delay of 29 days for a supplemental response. Patentee does not dispute the PTO's calculation for this Applicant Delay from May 13, 2009, to June 10, 2009. See 37 C.F.R. § 1.704(c)(8).

In view of the periods of Applicant Delay detailed above, the total Applicant Delay for this patent should be calculated as 72 days (i.e., the sum of 33 days, 10 days, and 29 days).

"A Delay"

A first PTO action was due on or before February 28, 2005 (the date that is fourteen months after December 31, 2003, the date on which the application was filed). The PTO mailed the first non-final Office Action on April 16, 2008, thereby according a PTO Delay of 1,143 days. Patentee does not dispute the PTO's calculation for this "A Delay" from March 1, 2005 (the day after the date that is fourteen months after the date on which the application was filed), to April 16, 2008. See 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1).

In view of the period of "A Delay" detailed above, the total "A Delay" for this patent should be calculated as 1,143 days.

"B Delay"

There is no dispute that the Office failed to issue a patent within three years of the filing date of the application and that Patentee is entitled to "B Delay" to compensate for that Office delay. The only issue in contention is the correct length of the "B Delay" period.

The period beginning on January 1, 2007 (the day after the date that is three years after the date on which the application was filed), and ending April 19, 2011 (the date the patent was issued), is 1,570 days in length. The "PTA 36 Months" entry in the PAIR/PALM system indicates that a total of 756 days were awarded for "B Delay" for this patent. Patentee respectfully submits that the PTO's calculation of this "B Delay" is incorrect.

Section 154(b)(1)(B)(i) of Title 35 excludes from the calculation of B Delay “any time consumed by continued examination of the application.” In the present matter, Requests for Continued Examination were filed on January 26, 2009, November 13, 2009, and September 14, 2010. The Director erred in the calculation of patent term adjustment by subtracting from B Delay a period of time that was not “consumed by continued examination of the application.” The PTO mailed a Notice of Allowance on December 28, 2010, thereby closing examination of the application on that date. Thus, no continued examination took place during the 113 day period from December 28, 2010 (the mailing date of the Notice of Allowance), until April 19, 2011 (the date the patent was issued). Accordingly, 113 days of B Delay should have been included in addition to the 756 days accorded by the Director, for a total B Delay of 869 days. Patentee respectfully submits that the Office’s calculation of “B Delay” is incorrect and that the correct PTO Delay for issuance beyond three years from filing is 869 days.

Overlap of “A Delay” and “B Delay”

As detailed above, 1,143 days of “A Delay” accumulated during the following period:
March 1, 2005, to April 16, 2008.

As detailed above, 869 days of “B Delay” accumulated during the following periods:
January 1, 2007, to January 26, 2009; and
December 28, 2010, to April 19, 2011.

As such, the periods of “A Delay” and “B Delay” overlap (i.e., occur on the same calendar day) for a total of 472 days, from January 1, 2007, to April 16, 2008.

Terminal Disclaimer

This patent is not subject to a terminal disclaimer.

Conclusion

In consideration of the events described above, Patentee believes the PTA calculation of 1,355 days is incorrect. As such, Patentee respectfully requests reconsideration of the PTA in the following manner:

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- 1) Total PTO Delay should be calculated as 1,540 days (i.e., the sum of 1,143 days of "A Delay" and 869 days of "B Delay" minus 472 days overlapping delay);
- 2) Total Applicant Delay should be calculated as 72 days; and
- 3) Total PTA should be calculated as 1,468 days.

The \$200 fee required under 37 C.F.R. § 1.18(e) is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other credits or charges to Deposit Account No. 06-1050, referencing Attorney Docket No. 16113-0639001.

Respectfully submitted,

Date: June 17, 2011

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